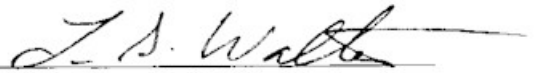


This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

Dated: January 24, 2008


Lawrence S. Walter
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

In re: DARRELL WILSON BOWERMASTER
ALICIA ROBIN BOWERMASTER,

Debtors

Case No. 05-42862

Judge L. S. Walter
Chapter 13

**DECISION AND ORDER OF THE COURT GRANTING TRUSTEE'S OBJECTION TO
THE PROOF OF CLAIM OF MIDFIRST CREDIT UNION**

This matter is before the court on the Chapter 13 Trustee's Objection to Allowance of Claim filed on October 25, 2006 (the "Trustee") (the "Claim Objection") [Doc. 20]; the Amended Response of Midfirst Credit Union to Trustee's Motion Objecting to Allowance of Claim and Request for Hearing, filed on November 24, 2006 ("Midfirst") ("Midfirst Response") [Doc. 22]; and the Response to Amended Response of Midfirst Credit Union to Trustee's Motion Objecting to Allowance of Claim and Request for Hearing of Darrell and Alicia Bowersmaster

(collectively, “Debtors”), filed on December 27, 2006 (the “Debtors’ Response”) [Doc. 25].

The court also reviewed the various pleadings that the parties submitted pursuant to this court’s July 12, 2007 Order Setting a Briefing Schedule [Doc. 42]. In particular, the court considered the Joint Stipulation of Facts filed on July 31, 2007 [Doc. 47], the Memorandum in Support of Trustee’s Objection to Proof of Claim of Midfirst Credit Union filed on August 1, 2007 [Doc. 48], the Debtors’ Memorandum in Support of Trustee’s Objection to Proof of Claim of Midfirst Credit Union filed on August 14, 2007 [Doc. 51], the brief filed by Midfirst on October 10, 2007 and the memorandum filed by Debtors on October 22, 2007 in support of each party’s respective position [Docs. 52 and 53]. All filings in accordance with the court’s scheduling order have been completed and the court is prepared to render its decision.

The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(a) and the General Order of Reference entered in this district. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(b).

FACTUAL AND PROCEDURAL BACKGROUND

The facts set forth below are derived from the documents of record filed with the court and the Joint Stipulation of Facts. Debtors filed a petition for relief under Chapter 13 of the United States Bankruptcy Code on October 10, 2005 [Doc. 1]. Debtors listed Midfirst on Schedule F of their petition as an unsecured creditor with an address of Midfirst Visa, P.O. Box 790289, Saint Louis, MO, 63179-0289. *Id.* Debtors’ amended plan was confirmed on February 3, 2006 and provides for a thirty-three percent (33%) dividend to unsecured creditors. [Doc. 16].

The Notice of Bankruptcy Case, Meeting of Creditors and Deadlines (the “Bankruptcy Notice”) served on Midfirst on October 29, 2005 at the address noted above was not returned by the post office. Midfirst’s address as noted above is a drop box address used by Midfirst to

receive payments. Further, Midfirst stipulated that it is a valid address used by Debtors in the past to make payments and a location where Midfirst usually conducts business.¹

The meeting of creditors as required by section 341(a) of the Bankruptcy Code was held on November 29, 2005. Pursuant to Fed. R. Bankr. P. 3002(c), the bar date to file a proof of claim for creditors in the same position as Midfirst was set 90 days from November 29, 2005, or February 27, 2006. Because of delays on the part of Midfirst in forwarding the Bankruptcy Notice to the appropriate party within Midfirst and in securing an attorney to file the proof of claim, Midfirst did not file its proof of claim until October 2, 2006, more than seven months after the bar date.

Based on Midfirst's late filing of its proof of claim, the Trustee objected to the allowance of Midfirst's claim. In its Response and various related pleadings, Midfirst argues that the Bankruptcy Notice was not properly served. Although acknowledging that the Debtors included a valid address for Midfirst in their schedules, Midfirst asserts that it was not the proper address to which notices and other filings in the bankruptcy case should have been sent. Therefore, Midfirst requests that its claim, although filed late, be allowed. Debtors and the Trustee dispute Midfirst's claim of lack of notice.

LEGAL ANALYSIS

Section 521(a) of the Bankruptcy Code requires a debtor, among other things, to file a list of creditors. 11 U.S.C. §521(a)(1). Fed. R. Bankr. P. 1007 which governs the proper scheduling of debts in bankruptcy petitions requires that in order for a debt to be duly listed, a debtor must state the name and address of the creditor. Fed. R. Bankr. P. 1007 (a)(1). "The purpose of requiring a debtor to list his creditors with their proper addresses is to permit notice to be given

¹ Midfirst makes some contradictory statements with respect to this issue. In the Joint Stipulation of Facts, it acknowledges that the address where the Bankruptcy Notice was sent and received is an address where Midfirst usually conducts business. On the other hand, in its brief, it reiterates its initial claim that said address is not an address where Midfirst usually conducts business.

to the creditors of the bankruptcy filing so that they may have an opportunity to avail themselves of the rights afforded to them by the Bankruptcy Code.” *In re Kleather*, 208 B.R. 406, 410 (Bankr. S.D. Ohio 1997). Neither the Bankruptcy Code nor the Bankruptcy Rules state that a creditor be listed at a particular address and thus, there is no requirement that a corporate creditor be listed at its home office or principal place of business. *WebMD Practice Services, Inc. v. Sedlacek* (*In re Sedlacek*), 325 B.R. 202, 212 (Bankr. E.D. Tenn. 2005). While the Bankruptcy Code provides no guidance as to what the proper address of a creditor is, the law is clear that such an address must be one at which notice or service would be reasonably calculated to comply with constitutional notions of due process. *Id.*

Where mail is properly addressed, stamped and deposited in the postal system, a presumption arises that the notice was properly sent to the addressee. *In re Rayborn*, 307 B.R. 710, 721-22 (Bankr. S.D. Ala. 2002). The Sixth Circuit has long applied the law as recognized in *Rayborn*. See *Simpson v. Jefferson Standard Life Ins. Co.*, 465 F.2d 1320, 1323-24 (6th Cir. 1972).

The presumption of receipt of a notice is, however, rebuttable. *United States v. Messics* (*In re Messics*), 159 B.R. 803, 806 (Bankr. N.D. Ohio 1993). In determining whether the presumption can be rebutted, a court must consider all of the facts and circumstances to determine whether it is more likely that the notice was received or that it was lost in the mail. *In re Crady*, 2006 WL 3876503, at *2 (Bankr. E.D. Ky. 2006) (citing *Schilling v. O’Bryan* (*In re O’Bryan*), 246 B.R. 271, 277 (Bankr. W.D. Ky. 1999)). The Sixth Circuit, for example, found that the presumption was rebutted when: (1) the creditor’s name did not appear on the mailing matrix; (2) two other similarly situated creditors did not receive the same notice; and (3) there was no record of whether the creditor's address was on the labels used to mail the notice. *Bratton v. Yoder Co. (In re Yoder Co.)*, 758 F.2d 1114, 1120-21 (6th Cir.1985).

In *Crady*, the court was presented with the same argument as the one Midfirst uses in this case – that notice to a valid but internally incorrect corporate address is insufficient to place the creditor on notice of a pending bankruptcy. *Id.*, at *1. In refusing to allow the creditor’s untimely filed claim, the *Crady* court recognized the strong presumption that notices properly addressed, stamped, and deposited in the postal system are received by the addressee. *Id.* The *Crady* court further found unavailing the creditor's argument that it was the debtors' failure to list on the mailing matrix the address where bankruptcy related papers ought to have been sent which created or significantly contributed to the notice breakdown. Instead, the court held that, “[a] fact of life for large modern financial organizations is the utilization of different addresses and departments to handle different types of financial transactions.” *Id.*, at *3. Similarly, in the *Perviz* case, the Bankruptcy Court for the Northern District of Ohio noted that:

[W]hile an octopus may have eight legs, it is still the same octopus. As a result, bankruptcy law not only requires, but demands, that companies, whether large or small, have in place procedures to ensure that formal bankruptcy notices sent to an internally improper, but otherwise valid, corporate address are forwarded in a prompt and timely manner to the correct person/department. . . . This rule has been universally followed by other bankruptcy courts, and is really just an extension of the principal that corporations are expected to have in place procedures to ensure that they comply with all areas of the law.

In re Perviz, 302 B.R. 357, 367 (Bankr. N.D. Ohio 2003) (further citations omitted).

The facts of *Crady* and *Perviz* are virtually identical to the facts of this case and their conclusions of law equally applicable. Debtors listed Midfirst in their schedules at the address provided to them by Midfirst to send their credit card payments. That is the address to which the clerk of court mailed the Bankruptcy Notice. There is no question that this address is a valid address. Midfirst makes no allegation that it did not receive the Bankruptcy Notice, that its credit card statements indicate that the address to which payments are to be sent is for payment purposes only or that another address is provided for all other correspondence. Further, Midfirst does not explain the internal procedures that it has in place to handle bankruptcy filings nor the

instructions it gives to the custodian of its St. Louis P.O. Box as to the handling and disposition of correspondence other than credit card payments, such as bankruptcy filings. Finally, Midfirst gives no detail as to how the Bankruptcy Notice finally ended up in the right hands.

Contrary to what Midfirst claims, the issue of this case is not a service issue pursuant to Fed. R. Bankr. P. 7004.² This rule discusses service of summons and complaints in adversary proceedings. This case is not an adversary proceeding. The issue herein is one of proper scheduling of a debt on a bankruptcy petition so that the clerk of court can adequately notify the holders of claims of the order for relief. *See* 11 U.S.C. § 342 (a); Fed. R. Bankr. P. 1007(a); Fed. R. Bankr. P. 2002 (f) and (g).

With no evidence other than the unsupported assertion that the sending to an Ohio corporation of a notice of bankruptcy filing at its Missouri address is not proper, Midfirst has not rebutted the strong presumption of receipt that arose as a result of the Bankruptcy Notice being sent (and not returned) to a valid address that Midfirst also acknowledges to be a usual place of business. It is Midfirst's responsibility to see that important mail received at its Visa processing center in Saint-Louis is appropriately handled by whatever person or entity Midfirst chooses to maintain the P.O. Box. *See Rayborn*, 307 B.R. at 723; *In re King*, 290 B.R. 641, 645 (Bankr. C.D. Ill. 2003) (“[C]reditors are charged with adopting appropriate internal procedures to properly process bankruptcy notices [.]”). Notice to a valid address is all that the Bankruptcy Code and due process require, not notice to a specific branch or location of a company. *Rayborn*, 307 B.R. at 723.

Therefore, the court finds that the Bankruptcy Notice was addressed so as to give Midfirst reasonably calculated notice of the bankruptcy filing allowing Midfirst to protect its rights. The court determines that Midfirst received proper notice of Debtors' bankruptcy filing.

² It is not, as Debtors assert, an issue under Fed. R. Bankr. P. 3007 which governs objections to claim. Midfirst does not allege that it did not receive Trustee's Objection. It merely alleges that it was not properly served with the Bankruptcy Notice.

CONCLUSION

For the reasons discussed herein, Trustee's Claim Objection [Doc. 20] is **SUSTAINED** and allowance of Midfirst Credit Union's claim is **DENIED**.

SO ORDERED.

cc:

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